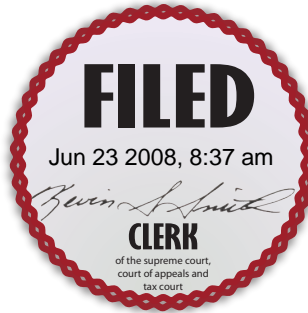


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

ALFRED DARTIS,

Appellant-Respondent,

vs.

DELCO REMY AMERICA, INC.,

Appellee-Petitioner.¹

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No. 48A04-0706-CV-312

APPEAL FROM THE MADISON SUPERIOR COURT

The Honorable Jack L. Brinkman, Judge

Cause No. 48D02-0209-PL-745

June 23, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

¹ The Anderson Human Relations Commission ("AHRC") is listed in the caption of the trial court's judgment as a Respondent. On December 1, 2006, the AHRC filed a notice of election not to file a brief in the trial court with respect to the instant matter, and it is not a party to this appeal.

Appellant-Respondent Alfred Dartis appeals the trial court's judgment granting a petition for judicial review brought by Appellee-Petitioner Delco Remy America, Inc. ("DRA") and reversing the finding of the Anderson Human Relations Commission ("AHRC") that DRA's termination of Dartis's employment was due to unlawful discriminatory practices. Upon appeal, Dartis claims that the trial court erred in concluding that the AHRC's finding was not supported by substantial evidence and was contrary to law. We reverse and remand.

FACTS AND PROCEDURAL HISTORY

On June 19, 1996, DRA,² a corporation doing business in Anderson, hired Dartis, an African American male, as a temporary employee. Dartis was assigned to the "PG26" area where he ran the resin oven. Dennis Gooding was Dartis's supervisor, both when he started and for a majority of the duration of his employment. Dartis was assigned to the third shift, but he often worked overtime, up to sixteen hours a day. Dartis did not miss a day of work.

In January 1997, Dartis received positive evaluations of his work performance by supervisor Gooding and general supervisor Tom Beaty in which they recommended that Dartis be hired as a permanent employee.³ According to both Gooding and Beaty, however, Dartis's performance deteriorated following this evaluation. Beaty claimed to

² DRA, which was formed in August of 1994 as a "spin-off" of several plants formerly owned and operated by the Delco Remy Division of General Motors, is a manufacturer of starter motors, alternators, and other components for cars, small pick-ups, and heavy-duty trucks.

³ Many of the exhibits introduced at the administrative hearing, including Dartis's evaluation, were not included in the record for review. In addition, there is no transcript in the record of any hearing on DRA's petition for judicial review in the instant matter, nor does it appear that a hearing took place.

have found Dartis sleeping. Gooding claimed that Dartis would not do his job and that he needed assistance. In addition, Dartis was reported to have developed an “attitude problem.” Appellant’s App. p. 405.

On March 7, 1997, Dartis’s employment with DRA was terminated. On May 2, 1997, Dartis filed a complaint with the Anderson Human Relations Commission (“AHRC”) alleging his termination was the result of racial discrimination. The AHRC held a hearing on Dartis’s complaint on November 1, 2, and 7, 2001.⁴ In an August 21, 2002 order, the AHRC concluded that DRA had terminated Dartis on the basis of unlawful discriminatory practices.

On September 19, 2002, DRA filed a petition for judicial review, which the trial court stayed pending a determination of Dartis’s damages. Following AHRC’s determination of damages, on May 5, 2004, Dartis petitioned for judicial review of this damages determination, which the trial court subsequently dismissed on October 28, 2005.

On August 1, 2006, the trial court, lifting the stay, set a briefing schedule on DRA’s petition for judicial review of the AHRC’s determination that DRA had discriminated against Dartis. In a March 19, 2007 judgment, which was submitted and approved on May 1, 2007, the trial court reversed the AHRC on the basis that its finding of discrimination was made without a quorum present and was based upon insufficient

⁴ As both parties acknowledge, the transcript from the agency hearing is incomplete and omits some or all testimony of a number of witnesses.

evidence. On May 7, 2007, the trial court denied Dartis's motion to correct error. This appeal follows.

DISCUSSION AND DECISION

Upon appeal, Dartis does not dispute that the AHRC's order is invalid for lack of a quorum. He argues, however, that the trial court erred in entering judgment in favor of DRA on the basis that there was insufficient evidence to support the AHRC's finding that his termination was the result of racial discrimination. Dartis requests that this court remand to the AHRC for a new hearing.

I. Standard of Review

An aggrieved party at an administrative hearing may seek judicial review, but this review is not unlimited. *Ind. Dep't of Natural Res. v. United Refuse Co., Inc.*, 615 N.E.2d 100, 103 (Ind. 1993). One ground upon which a reviewing court may grant relief is if it determines that the person seeking judicial relief has been prejudiced by an agency action that is unsupported by substantial evidence. *See id.*; (citing Ind. Code § 4-21.5-5.14(d)(5)). The trial court proceeding is not intended to be a trial *de novo*, but rather the court simply analyzes the record as a whole to determine whether the administrative findings are supported by substantial evidence. *Id.* Consequently, a trial court acts as an appellate court when it reviews an administrative order. *Id.*

When reviewing an administrative agency's decision, we apply the same standard of review as did the trial court. *Hendricks County Bd. of Zoning Appeals v. Barlow*, 656 N.E.2d 481, 483 (Ind. Ct. App. 1995). The reviewing court should neither substitute its judgment on factual matters for that of the agency, nor reweigh evidence. *Bucko Const.*

Co., Inc., v. Ind. Dept. of Transp., 850 N.E.2d 1008, 1017 (Ind. Ct. App. 2006). A reviewing court is not bound, however, by an agency's conclusions of law. *Ind. Dept. of Natural Res., Law Enforcement Div. v. Cobb*, 832 N.E.2d 585, 590 (Ind. Ct. App. 2005), *trans. denied*. An agency's findings of ultimate fact—factual conclusions derived from basic facts—are subject to a reasonableness standard of review. *Id.* Whether the ultimate fact of discrimination was a reasonable inference from the basic facts is a question of law properly subject to judicial scrutiny. *Id.*

For purposes of evaluating an employment discrimination claim filed with commissions such as the AHRC, Indiana has adopted the allocation of burdens and order of presentation of proof set out by the United States Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). *See Cobb*, 832 N.E.2d at 590. Under this *McDonnell Douglas* analysis, the complainant must prove a *prima facie* case of discrimination. *Id.* If the complainant fulfills this requirement, the burden then shifts to the respondent to articulate a legitimate, nondiscriminatory reason for the employee's rejection. *Id.* Should the respondent carry this burden, it is incumbent upon the complainant to prove by a preponderance of the evidence that the legitimate reasons offered by the respondent were but a pretext for discrimination. *Id.* The ultimate burden of showing that the respondent engaged in unlawful discrimination, however, remains at all times with the complainant. *Id.*

With respect to Dartis's burden to establish a *prima facie* case of employment discrimination, he was required to show that (1) he was a member of a protected class; (2) he was meeting his employer's legitimate performance expectations; (3) he suffered

an adverse employment action; and (4) other similarly situated employees who were not members of the protected class were treated more favorably. *See Fane v. Locke Reynolds, LLP*, 480 F.3d 534, 538 (7th Cir. 2007) (citing *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 142 (2000)). “The burden of establishing a *prima facie* case of disparate treatment is not onerous.” *Ind. Civil Rights Comm’n v. S. Ind. Gas & Elec. Co.*, 648 N.E.2d 674, 683 (Ind. Ct. App. 1995) (quotation omitted), *trans. denied*.

II. Analysis

In concluding that Dartis was terminated due to racial discrimination, the AHRC made the following factual findings:

8. Alfred Dartis was knowledgeable about his job.
9. Alfred Dartis took jobs that no one else wanted.
10. Alfred Dartis was a conscientious employee who never missed a day of work.
11. Shortly before his termination Alfred Dartis was considered an excellent employee by his supervisors. Credible co-employees testified that Alfred Dartis was a good employee and they believed that he should have been hired to be a permanent employee instead of being released.
12. Alfred Dartis was not made permanent and was terminated on March 7, 1997.
13. DRA’s explanation of the reasons for the termination of Alfred Dartis and the evidence they presented with respect to his work performance was not credible. DRA’s explanation of Alfred Dartis’s termination and work performance was contradicted by testimony of their own witnesses. A DRA witness refuted testimony by another witness of the management team that Alfred Dartis had changed from the time of the original positive performance evaluation.
14. Todd Griffin, a white male, was found asleep on the job as a temporary employee of [DRA] and was later hired as a permanent employee and was never given any reprimand for sleeping on the job.
15. Testimony presented that Alfred Dartis had slept on the job was not credible and Alfred Dartis testified that he did not sleep on the job.
16. Similarly situated employees who were outside the protected class of the Complainant were treated more favorably than the Complainant. Employees not in the protected class who had acted violently, had

attendance problems, slept on the job, failed to perform job duties appropriately, were treated more favorably than the Complainant and given permanent status.

Appellant's App. pp. 64, 62.⁵ Of particular note in the AHRC's findings were its determinations that reports of Dartis's status as a good employee were credible, that DRA's alleged reasons for terminating Dartis based upon his claimed poor work performance were not credible, and that Todd Griffin, who was a temporary Causasian employee found sleeping on the job, was later hired as a permanent employee. Given these facts, among others, the AHRC made the following legal conclusions:

9. That Alfred Dartis was meeting the employer's legitimate expectations and had been slated to become a permanent employee.

10. Alfred Dartis suffered an adverse employment action, in that he was released from employment and not made a permanent employee.

11. That similarly situated employees outside the protected class were treated more favorably.

12. Alfred Dartis has met his burden of proof in a prima facie case of discrimination based on race.

13. A Complainant, pursuant to Title VII may raise an inference of discriminatory practice by offering evidence of comparing himself to a similarly situated individual who is not a member of the protected class, who was treated more favorable [sic]. Todd Griffin was hired as a permanent employee after he was found asleep on the job at least twice as a temporary employee of [DRA]. Temporary [em]ployees of DRA who had violated the . . . policy were hired as permanent employees. Other temporary employees, who were white and not of the protected class of the Complainant who were made permanent despite alleged poor work performance similar to that alleged against Alfred Dartis.

15. During the hearing DRA provided contradicting evidence as to the nature of Alfred Dartis's termination. The reasons presented by DRA in support of the decision to release him were not credible and appear to the Commission to be pretextual.

⁵ AHRC's seven-page decision was not paginated in sequential order in Appellant's Appendix.

16. Alfred Dartis was terminated as a result of unlawful discriminatory practices by DRA. The discrimination was intentional.

17. That Alfred Dartis is entitled to an Order requiring DRA to cease and desist from any further discriminatory practice and to take further affirmative action as will effectuate the purposes of the laws with respect to discrimination which affirmative action shall include restoring of Alfred Dartis's losses.

Appellant's App. pp. 65-66.

In reversing the AHRC's ruling on the grounds that DRA did not discriminate against Dartis as a matter of law, the trial court stated as follows:

5. Dartis failed to establish a prima facie case of discrimination. Because of repeated performance issues that arose after his January, 1997 evaluation, Dartis failed to show that he was meeting DRA's legitimate expectations. Additionally, Dartis failed to show that similarly situated employees of another race were treated differently.

6. In addition, DRA has legitimate, nondiscriminatory reasons for releasing Dartis. The evidence shows that Dartis had numerous performance-related problems which gave DRA legitimate, non-discriminatory reasons to release him. Dartis failed to show that these reasons were pretextual.

Appellant's App. p. 98.

In what is arguably a reassessment of credibility, the trial court found, contrary to the AHRC's findings, that Dartis's work performance was poor and justified his termination, and that his treatment was equal to that of other similarly situated employees. The court's findings directly contradict the credibility findings of the AHRC that Dartis was a good employee and that reasons for his termination alleging poor work performance were not believable. In addition, the court found Dartis had failed to show that similarly situated employees of a different race were treated differently. Yet, the AHRC found that Caucasian employee Todd Griffin, also a temporary employee, was

found sleeping on the job as Dartis was alleged to have done, but that Griffin was nevertheless rewarded with a permanent position. The parties agree that the record of the AHRC hearing both on judicial review and in the instant appeal is incomplete and missing an unknown amount of witness testimony, including, apparently, Griffin's. Without a complete record, we are unable to evaluate the AHRC's order or determine whether Dartis's discrimination claim was viable as a matter of law, and we conclude the trial court was unable to do so as well. The trial court's judgment is based upon an incomplete record missing an unknown amount of witness testimony which may or may not have supported Dartis's claim. Its reversal of the AHRC's determination of discrimination was therefore in error.

Because both parties agree, and the trial court found, that the AHRC hearing was invalid for lack of a quorum, we reverse the trial court's judgment in favor of DRA and remand to the trial court with instructions to remand this cause to the AHRC for a new hearing with a sufficient quorum. The parties are further reminded that a complete record must be filed with the trial court when seeking judicial review.

The judgment of the trial court is reversed, and the cause is remanded with instructions.

BARNES, J., and CRONE, J., concur.